BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

TRACI RANZAU	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,026,466
PRESBYTERIAN MANORS	)	
Respondent	)	
Self-Insured	)	

ORDER

Respondent appeals the January 26, 2006 preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes. Claimant was awarded benefits in the form of temporary total disability and medical treatment after the Administrative Law Judge (ALJ) determined that claimant had proven that she suffered accidental injury arising out of and in the course of her employment.

ISSUES

Respondent raises the following issues in its Application For Review:

1. Whether the court erred in awarding claimant medical compensation.

2. Whether claimant's failure to request medical treatment from respondent at any time bars claimant from receiving compensation given that respondent has the right to direct medical care pursuant to K.S.A. 44-510(a) [sic] and was not given an opportunity to do so.

3. Whether claimant suffered an accidental injury.

4. Whether the alleged injury arose out of and in the course of claimant's employment.

5. Whether timely notice was given by claimant to respondent.[1]

[1] Application For Review at 1-2.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of Administrative Law Judge Nelsonna Potts Barnes should be affirmed.

Claimant alleges accidental injury from approximately September 15, 2005, and each and every day until approximately October 3, 2005. Claimant's job with respondent as a CNA (certified nurses aide) required repetitive lifting on a daily basis. On approximately September 15, 2005, claimant began experiencing light low back pain. She presented to Edward D. Zimmerman, M.D., at the Ark City Clinic on September 23, 2005, with a two-day history of low back pain. She could not remember any acute incident. Claimant returned to work performing her regular duties as a CNA, but testified her condition continued to worsen.

On October 3, 2005, claimant was examined by Aaron T. Watters, M.D., who is also at the Ark City Clinic. X-rays taken at that time showed a T11-12 fracture, which the doctor's report indicated was "likely from lifting at work."[2] Ultimately, Dr. Watters gave claimant a 10-pound lifting restriction, which claimant provided to respondent. Also, on October 3, 2005, claimant advised respondent through its representative, Sarah Griggs, that she had suffered an injury at work. Ms. Griggs, who was respondent's executive director at the time, was the first person claimant advised of a work-related connection to her pain.[3] Respondent accommodated Dr. Watters' restrictions until approximately the middle of November, at which time claimant was required to return to her regular duties.

Claimant was referred by respondent to Paul S. Stein M.D., a board certified neurological surgeon, for an examination on November 2, 2005. Dr. Stein diagnosed claimant with a back strain with no indication of a work-related connection. Dr. Stein found significant the fact that claimant awoke one day with discomfort. He also noted that claimant had a history of a back injury after an automobile accident in 2000. Claimant acknowledged the automobile accident during her preliminary hearing testimony, but stated that her symptoms went away after approximately four months. Except for a trip to an emergency room, claimant received no treatment after the auto accident.

Claimant was referred by her attorney to Pedro A. Murati, M.D., board certified in physical medicine and rehabilitation. Dr. Murati examined claimant on December 5, 2005, diagnosing low back pain secondary to radiculopathy; right trochanteric bursitis; post compression fractures of T7, T8 and T9, preexisting; and left SI joint dysfunction.

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[2] P.H. Trans., Cl. Ex. 1 at 1.

[3] P.H. Trans. at 31.

Dr. Murati determined that claimant's current diagnoses were, within a reasonable medical probability, related to her work-related injury of September 15, 2005.

In workers compensation litigation, it is the claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.[4]

K.S.A. 2005 Supp. 44-508(d) defines "accident" as,

> . . . an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. The elements of an accident, as stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment.

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.[5]

It is well established under the Workers Compensation Act in Kansas that when a worker's job duties aggravate or accelerate an existing condition or disease, or intensify a preexisting condition, the aggravation becomes compensable as a work-related accident.[6]

In workers compensation litigation, it is not necessary that work activities cause an injury. It is sufficient that the work activities merely aggravate a preexisting condition. This can also be compensable.[7]

In this instance, claimant is alleging a series of microtrauma injuries suffered while performing her CNA lifting duties for respondent. While respondent raises several defenses, calling into question claimant's accuracy regarding the alleged date of accident, claimant's delay in reporting the accident, and the sometimes contradictory histories of accident provided to respondent employees and the various doctors' offices, the Board finds claimant has proven by a preponderance of the credible evidence that she has suffered accidental injuries through a series of traumas while performing her CNA duties for respondent. Claimant's confusion regarding the date of accident is understandable

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[4] K.S.A. 2005 Supp. 44-501 and K.S.A. 2005 Supp. 44-508(g).

[5] *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

[6] *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978).

[7] *Harris v. Cessna Aircraft Co.*, 9 Kan. App. 2d 334, 678 P.2d 178 (1984).

when no traumatic event precipitated the need for medical treatment. Microtraumas occur over sometimes lengthy periods of time. It is difficult for doctors to determine dates of accident. And ALJs, the Board and the Kansas appellate courts have long struggled with that factual and legal issue. It is understandable that a claimant not versed in workers compensation litigation would be confused. Claimant's testimony has been consistent that her problems occurred gradually, with the pain in her back increasing over time with physical activity at work. The Board finds claimant has sustained her burden in this regard, for purposes of preliminary benefits.

Respondent also claims claimant failed to provide timely notice. K.S.A. 44-520 requires a claimant provide notice to the employer within 10 days of the accident. Here, claimant has proven she suffered an accident through a series of traumas ending October 3, 2005. Respondent acknowledges notice was provided on October 3, 2005, when claimant spoke to Ms. Griggs about her injuries. The Board finds claimant satisfied the requirements of the statute.

Respondent also argues the court erred in awarding claimant medical compensation and that it was denied the opportunity to direct claimant's medical care.

Not every alleged error in law or fact is reviewable from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing orders is generally limited to the following issues which are deemed jurisdictional:

1. Did the worker sustain an accidental injury?

2. Did the injury arise out of and in the course of employment?

3. Did the worker provide timely notice and written claim of the accidental injury?

4. Is there any defense that goes to the compensability of the claim?[8]

> Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.[9]

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[8] K.S.A. 44-534a(a)(2).

[9] *Allen v. Craig*, 1 Kan. App. 2d 301, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977); *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D. No. 512*, 235 Kan. 927, 683 P.2d 902 (1984).

Here, the ALJ awarded claimant medical benefits and ordered respondent to provide a list of three physicians to claimant, from which claimant shall select one as the authorized treating physician. These orders are well within the jurisdiction of the ALJ. The Board does not find the ALJ exceeded her jurisdiction.[10]

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated January 26, 2006, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April, 2006.

BOARD MEMBER

c: Steven R. Wilson, Attorney for Claimant
Kathleen N. Wohlgemuth, Attorney for Respondent
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[10] K.S.A. 44-534a and K.S.A. 2005 Supp. 44-551.